

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KING RANGE, JR.,

Plaintiff,

-against-

230 WEST 41ST STREET LLC, HAT TRICK
PIZZA, INC., DOMINO'S PIZZA LLC AND
DOMINO'S PIZZA FRANCHISING LLC,

Defendants.

Civil Action No.: 1:17-cv-00149-LAP

**DECLARATION OF
JOHN W. EGAN**

John W. Egan, pursuant to 28 U.S.C. § 1746, hereby declares under penalty of perjury that the following is true and correct:

1. I am over the age of 18 and have personal knowledge of the following facts.
2. I am a partner at Seyfarth Shaw LLP, and counsel for Defendant 230 West 41st Street LLC ("230 West") in the above-captioned matter.
3. I respectfully submit this declaration in support of Defendants' Motion for Summary Judgment.
4. The Complaint in this action (ECF No. 1) is annexed as **Exhibit "A"**.
5. Excerpts of the transcript of the deposition of Plaintiff King Range, Jr. on November 20, 2019 are annexed to this Declaration as **Exhibit "B."**
6. Excerpts of the transcript of the deposition of Dedre de la Rosa on December 9, 2019 are annexed to this Declaration as **Exhibit "C."**
7. Excerpts of the transcript of the deposition of Jerry Steele on December 6, 2019 are annexed to this Declaration as **Exhibit "D."**

8. Excerpts of the transcript of the deposition of John Serao on December 3, 2019 are annexed to this Declaration as **Exhibit “E.”**

9. Excerpts of the transcript of the deposition of David J. Weiner on December 3, 2019 are annexed to this Declaration as **Exhibit “F.”**

10. Excerpts of the transcript of the deposition of David Keane on December 9, 2019 are annexed to this Declaration as **Exhibit “G.”**

11. Excerpts of the transcript of the deposition of Robert Lloyd Cookston on December 6, 2019 are annexed to this Declaration as **Exhibit “H.”**

12. Excerpts of the transcript of the deposition of Michael Thomas Mitchell on November 21, 2019 are annexed to this Declaration as **Exhibit “I.”**

13. Excerpts of the transcript of the deposition of Douglas Anderson on December 9, 2019 are annexed to this Declaration as **Exhibit “J.”**

14. The Certificate of Occupancy for the building located at 219 West 40th Street dated January 11, 1933 is annexed to this Declaration as **Exhibit “K.”** I obtained this document by accessing the Buildings Information System (“BIS”) website of the New York City Department of Buildings by way of a website link (<http://a810-bisweb.nyc.gov/bisweb/PropertyProfileOverviewServlet?boro=1&houseno=227&street=West%2040th%20Street&requestid=0&s=A03C41B885B461E4F46BD08866A7430E>). In discovery, 230 West identified and produced the webpage on the BIS for the Property.

15. Annexed to this Declaration as **Exhibit “L”** is a historical photograph bearing Bates-stamp number 230W41ST000609, which was produced in discovery and identified as Plaintiff’s deposition Exhibit “9.”

16. Annexed to this Declaration as **Exhibit “M”** is are floor plans bearing Bates-stamp numbers HATTRICK000086, 92, which were produced in discovery and identified as Plaintiff’s deposition Exhibit “22.”

17. Annexed to this Declaration as **Exhibit “N”** is a document titled “227 W 40th Street Domino’s original build out 2002” bearing Bates-stamp number HATTRICK000098, which was produced in discovery and identified as part of Plaintiff’s deposition Exhibit “24.”

18. Annexed to this Declaration as **Exhibit “O”** are invoices bearing Bates-stamp numbers HATTRICK000011, 16, and 25, which were produced in discovery and identified as part of Plaintiff’s deposition Exhibit “24.”

19. Annexed to this Declaration as **Exhibit “P”** are floor plans bearing Bates-stamp numbers HATTRICK000101-108, which were produced in discovery and identified as Plaintiff’s deposition Exhibit “23.”

20. Annexed to this Declaration as **Exhibit “Q”** is a true and correct copy of the Rule 68 Offer of Judgment that was served by Defendants on Plaintiff on February 11, 2019.

21. Annexed to this Declaration as **Exhibit “R”** is a copy of Plaintiff’s expert report dated August 1, 2019, which was served by Plaintiff on August 14, 2019, and identified as Defendants’ deposition Exhibit “10.”

22. Annexed to this Declaration as **Exhibit “S”** is a sketch bearing Bates-stamp number 230W41ST000928, which was produced in discovery and identified as Plaintiff’s deposition Exhibit “13.”

23. Annexed to this Declaration as **Exhibit “T”** is a photograph bearing Bates-stamp number 230W41ST000397, which was produced in discovery and identified as Plaintiff’s deposition Exhibit “18.”

24. Annexed to this Declaration as **Exhibit “U”** is a bid document bearing Bates-stamp numbers 230W41ST000018-20, which was produced in discovery and identified as Defendants’ deposition Exhibit “24.”

25. Annexed to this Declaration as **Exhibit “V”** is a bid document bearing Bates-stamp numbers 230W41ST000015-17, which was produced in discovery and identified as Defendants’ deposition Exhibit “23.”

26. Annexed to this Declaration as **Exhibit “W”** is a bid document bearing Bates-stamp numbers 230W41ST000010-15, which was produced in discovery and identified as Defendants’ deposition Exhibit “25.”

27. Annexed to this Declaration as **Exhibit “X”** is a copy of Plaintiff’s Supplemental and Amended Expert Disclosures, which was served by Plaintiff on August 14, 2019, and identified as Defendants’ deposition Exhibit “8.” The only expert identified in these disclosures is Michael Mitchell, AIA. Plaintiff has not identified any other experts in this action, including an expert in structural engineering.

28. Annexed to this Declaration as **Exhibit “Y”** is a copy of the SK-01 drawing that was marked up at the deposition of Plaintiff’s expert on November 21, 2019 and introduced as Defendants’ deposition Exhibit “11.”

29. Annexed to this Declaration as **Exhibit “Z”** is a copy of the SK-02 drawing that was marked up at the deposition of Plaintiff’s expert on November 21, 2019 and introduced as Defendants’ deposition Exhibit “12.”

30. Annexed to this Declaration as **Exhibit “AA”** is an image bearing Bates-stamp number 230W41ST0000418, which was produced in discovery and identified as part of Plaintiff’s deposition Exhibit “4.”

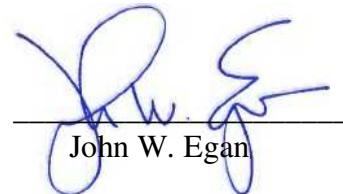
31. Annexed to this Declaration as **Exhibit “BB”** is a lease bearing Bates-stamp numbers 230W41ST000022-99, which was produced in discovery and identified as Plaintiff’s deposition Exhibit “21.”

32. The parties have attended two conferences before the Court, conducted a joint expert inspection, exchanged disclosures from 4 expert witnesses, and conducted 11 fact and expert depositions.

33. On October 17, 2019, the parties participated in this District’s Mediation Program, which did not result in a settlement.

34. Plaintiff has not produced any documents in discovery, including proof that he provided notice of this lawsuit to the New York State Attorney General.

Dated: New York, New York
February 7, 2020



John W. Egan